THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.123 of 2007

Date:04.06.2007

Between:

M.Suryanarayana Reddy

.. PETITIONER

AND

The Superintending Engineer and others

..RESPONDENTS

ORDER:

The petitioner is a civil contractor. He was awarded a contract for construction of super passage at kilometer 4.40 of Vempadu Major(HR) in Bt.No.21/11, in the year 1995. The contract was awarded to the petitioner by respondents 1 and 2 at a cost of Rs.14,00,436/-. The petitioner did not complete the work and the left over portion was got executed through another agency. The petitioner received letter, dated 16.08.2006, from respondent No.4, through which he was required to pay a sum of Rs.3,29,767/- as dues to respondents 1 and 2. This notice was issued under the provisions of the Revenue Recovery Act (for short 'the Act').

The petitioner contends that he did not receive any notice of demand from respondents 1 and 2 and straight away the notice under the Act was served upon him. He assails the same on several grounds.

On behalf of respondents 1 and 2, a detailed counter-affidavit is filed. Copies of letters that were addressed to the petitioner demanding the difference of cost in getting the work

executed are filed. However, it is admitted that the said letters were not served upon the petitioner and, in fact, a complaint came to be made to the Police officials to trace him.

The learned counsel for the petitioner submits that respondents 1 and 2 were not justified in addressing a latter to respondent No.4 for initiation of proceedings under the Act, without, by themselves, determining the liability. He contends that even according to respondents 1 and 2, the demand was not served upon the petitioner and the impugned proceedings cannot be sustained in law.

The learned Government Pleader for Irrigation, on the other hand, submits that the efforts made by respondents 1 and 2 to serve the notice of demand and other correspondence on the petitioner did not fructify and left with no alternative, they have addressed a letter to respondent No.4.

It is a matter of fact that the petitioner did not complete the work entrusted to him. While he attributes some lapses to the respondents, the latter accused the petitioner of his failure. Respondent No.2 addressed a detailed letter, dated 03.06.1997, to the petitioner pointing out that the work left unexecuted by him was got completed by engaging another agency and in that process, the department incurred loss. In another letter, dated 13.02.1998, the extra cost was mentioned as Rs.4,42,286/- and after deducting the amount payable to the petitioner, the balance was arrived at Rs.3,27,460/-. This demand was followed by other letters. Copies of all the said letters are enclosed to the counter-affidavit. The respondents admitted that the letters of demand could not be served upon the petitioner.

The occasion to initiate proceedings under the Act arises only when the liability towards a public agency is determined, duly giving an opportunity to the defaulter. In the instant case, the petitioner was not served with any notice of demand, though such notices were addressed by respondents 1 and 2. Before the revenue authority requires a defaulter to pay the amount, there must have been a determined liability. The petitioner states that he had to shift his residence to another place on account of family problems. Under these circumstances, the petitioner can be given reasonable time to reply to various letters issued by the respondents commencing from the one, dated 03.06.1997, to the one, dated 26.02.1999. On receipt of the same, respondent No.2 can pass an order determining the liability and give reasonable time to the petitioner to make payment of the amount arrived at by him. The present set of proceedings under the Act cannot be sustained in law.

Hence, the writ petition is partly allowed directing that:

(a) the notice, dated 16.08.2006, issued by respondent No.4 shall stand set aside;

(b) the petitioner is granted two weeks' time to file his explanation to various letters addressed by respondent No.4; and

(c) it shall be open to respondent No.2 to pass appropriate orders taking into account the reply that may be submitted by the petitioner, within four(4) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

_____

04.06.2007

kdl